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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Patent Office Board of Appeals

<b>APPLICANT:</b> D.W. Froesel <b>SERIAL NO:</b> 10/700,226 <b>FILED:</b> November 3, 2003 <b>FOR:</b> Washer Toss Game	<b>GAU:</b> 3711 <b>EXAMINER:</b> R.W. Chiu <b>St. Louis, Missouri</b> <b>Date:</b> February 16, 2006 <b>DN:</b> 7371
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REVISED  
BRIEF FOR APPLICANT

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**Citation of Cases and Statutes**

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### **I. Real Parties in Interest**

The party and interest in this particular application is David William Froesel, the Applicant. The invention and patent application has not been assigned to any company.

## **II. Related Appeals and Interferences**

There are no related appeals or interference proceedings relating to the subject matter of this patent application.

### **III. Status of Claims**

Applicant filed an Amendment A in the United States Patent Office on May 27, 2005. The examiner returned a final rejection dated August 22, 2005. It is from this final rejection that the Applicant has filed its Notice of Appeal, and the brief herein.

The claims under appeal are claims 3, 5, 6, 8-12, and 14.

1. Cancelled
2. Cancelled
3. Currently Amended
4. Cancelled
5. Currently Amended
6. Currently Amended
7. Cancelled
8. Currently Amended
9. Currently Amended
10. Currently Amended
11. Original
12. Currently Amended
13. Cancelled
14. New

#### **IV. Status of Amendments**

There have been no additional amendments following the final rejection that issued from the examiner.

## **V. Claimed Subject Matter**

As reviewed in the specification, and as depicted in the drawings, this invention relates to a Washer Toss Game. More specifically, it is a particularly styled polymer molded Washer Toss Game that has an aperture provided centrally thereof, and into which a metallic container may conveniently fit, generally of the standard quart size paint can, so that when the washer toss game is played, when the washers fall into the central bulls-eye area, namely, in the can, it makes a loud metallic impacting noise. Thus, the player knows he has hit a bulls-eye. But, when the washer falls into the outer perimeter of the game, as into the polymer molded portion, it makes more of a thud, leading one to believe that they do get at least some points, but not the maximum. Hence, the noise associated with the playing of this game is intended as a means to add to the excitement and pleasure of its play during usage of this Washer Toss Game.

### **Claim 14:**

As can be seen in the figures, the invention includes a polymer molded box 1 (p. 5, l. 7), it includes a series of side walls 2 through 5 (p. 5, l. 8), which stand upright, and are integrally formed with a base 6 (p. 5, l. 9). Extending centrally and integrally upwardly from the base 6 is a central sleeve 7 (p. 5, l. 10), the central sleeve has a hollow opening, and is designed for accommodating in a reasonable snug fit, as explained, one of the quart or other paint cans 8 (p. 5, l. 12), which form the central region or the bulls-eye for the game, when played. Hence, the entire structure for the polymer molded box, with the exception of its held can, is integrally formed, preferably molded from a polymer, as during its fabrication.

FIG. 2 readily discloses the formed box 1, with the internal cavity 9, and its central sleeve 7, all of which are provided for accommodating the locating of the metallic can 8 therein.

FIGS. 3 and 4 show the various structures of the reinforcement that are molded into the polymer molded box 1 of this invention. As can be seen, the



walls 2-5 are essentially spaced apart, incorporated having an outer wall 12 (p. 6, l. 10), and an inner wall 13 (p. 6, l. 10), formed entirely around the perimeter of the box. Hence, reinforcement is provided therebetween, through the use of ribs, as at 14 (p. 6, l. 12), there being a plurality of them furnished intermediate the said inner and outer side walls, to add structural strength to the formed walls. In addition, it can be seen that similar type of reinforcement, (p. 6, l. 15), is provided within the formed integral sleeve 7, of the structured housing. And, there is a bottom or base 16 (p. 6, l. 16), formed of the box. There are further ribs 17 (p. 6, l. 18), radiating from the center of the formed housing. There are also a series of apertures, as at 18 (p. 6, l. 19), formed through the base 16, and generally arranged in alignment with the formed ribs 17, and through which nails or other fasteners may be used for securing the box to the ground, in preparation for usage.

FIG. 4 provides an upward isometric view, similar to that of FIG. 3, but from an oblong position, but in this instance, it is an isometric view looking up through the base 16 of the formed housing. The various apertures 18 are noted. The extra reinforcing ribs 17 are disclosed.

Thus, the integrally molded and formed box, structured as the housing for this invention, provides a one-piece unit readily available for usage when participating in a washer toss game. Only the can 8 need to be located within the central sleeve, with its exposed end opening upwardly, to allow for participation in the washer toss game of this invention.

FIG. 5 generally discloses the layout of the various housings, or boxes, in preparation for playing of the Washer Toss Game.

## **VI. Grounds of Rejection**

The sole basis for rejection by the examiner, of the claims 3, 5, 6, 8-12, and 14, and to be reviewed upon appeal, is the examiner's rejection under 35 U.S.C. § 103 (a), as being unpatentable over Geror, United States Pat. No. 5,882,010, in view of the United States patent to Blume, Pat. No. 4,392,653.

## **VII. Argument**

### **Claims 3, 5, 6, 8-12, and 14:**

The examiner has basically rejected the claims of this application No. 3, 5, 6, 8-12, and 14, as previously reviewed, over the prior patent to Geror, in view of Blume. The examiner states that the invention is obvious to anyone skilled in the art.

The only exception to the foregoing, aside from the structural details of the claimed invention, is that after all these years, you would think that someone would have given some thought to the acoustics of the game, when played, such that when a metal or other washer is tossed into a box, or polymer molded box of this invention, that differentiation of sounds may be generated, so that from a distance away, where the player tosses the washer, he/she can readily hear and determine when a bulls-eye has been met, or when just peripheral points have been obtained. For all the years that the washer toss game has been in existence, it does not appear that anyone has given thought to this concept, nor even suggested the same, at least in view of the prior art that has been cited and relied upon by the examiner.

For example, there is no doubt that the Geror Pat. No. 5,882, 010, shows a game with rings and targets. This type of a game has been around for many years. And, there is no doubt that the Blume reference shows a game apparatus formed as a box, probably of wood, and has a series of telescoping receiving members 38, 40, 42, and 44, depending upon the height and complexity that the player wishes to make the game when playing the Blume style of apparatus. But, Blume does not describe anything with respect to the audible aspects of this game, how certain components may be made of metal, and other parts of plastic or wood, in order to provide for that distinction, when playing the game, so that the bulls-eye can be heard by everyone, to add to its excitement. Certainly, Blume just does not suggest that Geror can be modified, to come up with answering structure to what is set forth in the independent claim 14, of this

particular application. See the case of *In re Geiger*, 815 F.2d 686 (Fed. Cir. 1987). *Geiger* states that obviousness cannot be established by combining teachings of prior art to produce the claimed invention, absence of teaching, suggestion, or incentive supporting that combination. There is nothing in either of these two prior art which suggests towards the claimed invention, and what is the essence of this particular development.

The examiner states that while Blume fails to disclose the specific material used for his insertable member, which is clearly an omission that Blume just does not comprehend what is the essence of Applicant's invention, therefore, could not suggest the same, for the examiner now to state that it would have been obvious to one of ordinary skill in the art at the time the invention was made to make it from metal, is simply pure conjecture. No one has ever done it, and therefore, since the prior art relied upon by the examiner is totally devoid of stating just how a particular size metal can may be located within the central part of a polymer molded housing, it is submitted, the prior art, then, just does not suggest towards the invention as claimed herein. Certainly it is within the general skill of a worker in the art to know that products can be made of different materials, but that when the specific material used provides a greatly enhanced result, such as the audio sound exhibited when a bulls-eye is made using the current invention, and the prior art simply does not give any consideration to that aspect of this invention, then it is submitted that the examiner's edict that one skilled in the art would know it, is merely conjecture, and not based upon an application of the prior art.

While FIG. 3 of Geror shows a form of molded box, it is one that is devoid of any reinforcement. Secondly, it does not show any means for accepting a nail or other securing device, within bottom exposed apertures, as shown at 18 in FIG. 4 for the current invention, so that the device may be fixed to the ground, during usage. Nor does Blume show any type of reinforced structure, in the first instance, nor any means for securing of the game apparatus to the ground, in the manner as identified and claimed by the Applicant, in his claims 8, 9, 10, and 11. Particularly, claim 10 defines how the bottom reinforcement rib, or ribs, have

apertures therethrough, and provided for accommodating the insertion of a nail therein, to affix the molded box to the ground during usage. This is just not shown, described, suggested, or otherwise even considered, by either of the prior art cited by the examiner.

### **VIII. Conclusion**

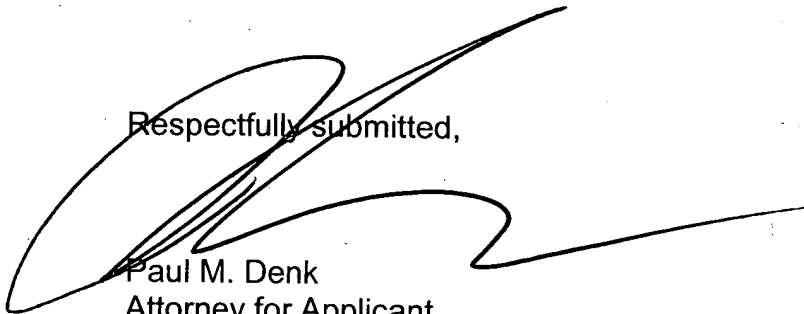
It is submitted that patentable subject matter is set forth in the remaining claims of this application. It is believed that the claimed subject matter is just not rendered so obvious, to one of ordinary skill in the art, or is it even suggested by any accommodation of the prior art as cited and relied upon by the examiner, notwithstanding the examiner's position. It is further not seen how the prior art even suggests any modification to lead towards the accommodation of the type of Washer Toss Game as described, shown, and claimed, for this invention.

In view of the foregoing, it is submitted that patentable subject matter is set forth in these remaining claims.

The Board's review of this matter would be appreciated.

Enclosed is a check in the amount of \$250.00 covering the cost for this appeal. If any additional charges are due, please debit our deposit account No. 040731.

Respectfully submitted,



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listed item(s) check for \$250

### **Appendix**

**Claim 3.** The washer toss game of Claim 14 wherein said metal container is a paint can.

**Claim 5.** The washer toss game of Claim 14 wherein the polygonal box is rectangular.

**Claim 6.** The washer toss game of Claim 14 wherein the polygonal box is square.

**Claim 8.** The washer toss game of Claim 6 wherein each wall is a double formed wall, and integrally formed reinforcement provided between each of the doubly formed walls, to add to their strength during usage.

**Claim 9.** The washer toss game of Claim 8 wherein the base includes a bottom platform for the molded box, a series of reinforcement ribs integrally formed beneath the platform, and said reinforcement ribs providing reinforcement for the box when applied upon the ground and used for the washer toss game.

**Claim 10.** The washer toss game of Claim 9 wherein there being an aperture provided through the base, and said aperture extending through the base formed platform and its reinforcement rib and provided for accommodating the insertion of a nail therein to affix the polymer molded box to the ground during usage.

**Claim 11.** The washer toss game of Claim 10 wherein there is an aperture provided through the base platform and its rib, at each internal corner of the molded box, to accommodate a nail fastener therein to secure the box to the ground during usage.

**Claim 12.** The washer toss game of Claim 14 wherein there are a pair of the polymer molded boxes used during participation in the washer toss game, said boxes being arranged approximately 25 feet apart and used for performing the game.

**Claim 14.** A washer toss game comprising an integrally molded polymer box incorporating side walls, a base integrally molded with the side walls, an upstanding centrally arranged sleeve, said sleeve being integrally formed with the base, said sleeve having an opening therein sufficiently to accommodate the insertion of a container therein during usage, a container for inserting within the said sleeve, said container capable of being removed from said polymer molded box, said centrally disposed container is formed of metal, said polymer molded box is polygonally shaped, the polymer molded box includes a series of integrally formed side walls, and the game base, the diameter of each metal container is approximately greater than five inches, and the diameter of the integrally formed central sleeve for the box is slightly greater than the diameter of said container to accommodate its insertion and removal therefrom, whereby upon participating in the game, the user tosses a washer at the box in an effort to obtain their entrance therein, and particularly into the centrally disposed metal container.



### **APPENDIX (EVIDENCE)**

There is no evidence that has been identified nor needs to be appended in this application.

**APPENDIX (RELATED PROCEEDINGS)**

Applicant has already identified the related appeal in section II of this brief.